IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.690 OF 1996

Dena Bank, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, having its Head Office at Maker Towers `E', Cuffe Parade, Bombay – 400 005, and a brach office, amongst other places, at Surya Prakash, 11, M.G. Road, Mulund (West), Bombay – 400 080. ... Plaintiffs

Vs.

1. Prakashchandra Girdharlal Agrawal, Hindu, adult, carrying on business in the firm name and style of M/s. Prakash Chandra Rakesh Kumar at Subzi Mandi, Chandi Road, Hapur (UP) and also at G-203, APMC Market Yard, Turbhe – 400 603, New Bombay.
2. Mr. Rajivkumar Prakashchandra Agrawal, Hindu, adult, residing at JN 2/9-A, Ashirwad Society, Room No.8, Sector 9, Vashi, New Bombay.

3. Mr. Sunil Garg, Hindu, adult, having his address at 204, Vyapar Bhavan, 49, P.D'mello road, Carnac Bunder, Bombay – 400 009.

4. Mr. Sunil Kaushik, Hindu, adult, having his address at 204, Vyapar Bhavan, 49, P. D'Mello Road, Carnac Bunder, Bombay – 400 009. ... Defendants

Mr. K.D. Shukla for the plaintiffs.

None for the defendants.

CORAM : SMT. RANJANA DESAI, J.

DATED : AUGUST 23, 2007.

ORAL JUDGMENT :-

1. This suit is on the board under caption "Undefended Suits for Ex-parte Decree". The plaintiffs have tendered in the court affidavit in lieu of examination-in-chief dated 1/8/2007 of its Branch Manager Smt. Chitra Ramkrishnan. She has affirmed and reiterated all the averments made in the plaint. It is taken on record and marked "X". The plaintiffs have also tendered list of documents along with original documents on which the plaintiffs have placed reliance. They are taken on record and marked "Y

(Colly.)". The plaintiffs have also tendered a compilation of correspondence exchanged between the plaintiffs and the defendants. It is marked ` Z(Colly.)'.

2. The case of the plaintiffs, as narrated in the plaint and as confirmed by Smt. Chitra Ramkrishnan in the court, today, is as under :

The plaintiffs are a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, having their Head Office at Maker Towers `E', Cuffe Parade, Bombay – 400 005 and a Branch Office at Surya Prakash, 11 M.G. Road, Mulund (West), Mumbai – 400 080. Defendant 1 is the sole proprietor of M/s. Prakash Chandra Rakesh Kumar, a firm dealing in onions and potatoes. Defendant 2 is the son and constituted attorney of defendant 1 and has signed the relevant documents on behalf of defendant 1 and has been operating the said account. Defendants 2 and 3 are the guarantors.

3. According to the plaintiffs on or about 13/12/1990, at the request of defendants 1 and 2, the plaintiffs granted a cash credit limit of Rs.1,00,000/- to the firm of defendant 1, in consideration whereof and to secure due repayment thereof along with all interest, costs, charges, expenses, commission, etc., defendant 2 executed and delivered to the plaintiffs the following documents :

(a) *Demand Promissory Note dated 13/12/1990 for Rs.1,00,000/- promising to pay on demand, jointly and severally, the said sum for value received with interest @ 17% p.a. with quarterly rests. The said document is on record. It is marked as Ex-A.*

(b) *Letter of Continuing Security dated 13/12/1990 inter alia recording that the aforesaid Demand Promissory Note is to be treated as continuing security. The said document is on record. It is marked as Ex-B.*

(c) *General Letter of Lien and Set Off dated 13/12/1990 inter alia giving various authorities to the plaintiffs in regard to accounts and securities. The said document is on record. It is marked as Ex-C.*

(d) *Instrument of Hypothecation of Goods dated 13/12/1990 inter alia hypothecating unto the plaintiffs by way of first charge all the stocks of onions and potatoes lying with the defendants Nos.1 and 2. The said document is on record.*

It is marked as Ex-D."

4. According to the plaintiffs, defendants 3 and 4 are the guarantors. They executed and delivered to the plaintiffs guarantee bonds dated 26/11/1990, inter alia, guaranteeing the due repayment of the aforesaid advance together with interest thereon and all other costs, charges, expenses, commission, etc. relating thereto and rendering themselves jointly and severally liable for the entire claim of the plaintiffs in the event of defaults by defendants 1 and 2. The said guarantee bonds are on record at Ex-D1 and Ex-D2.

5. According to the plaintiffs, defendants 1 and 2 availed of the aforesaid advance but failed and neglected to run the accounts in an orderly manner. They failed and neglected to submit stocks statements and financial statements periodically to the plaintiffs for monitoring the said advance. They failed and neglected to show significant turnover in the said account justifying continuance of the said facility. The account having been run for some initial months

became stagnant, warranting recall of the said advance. The plaintiffs requested and reminded the defendants for regularizing the said account but to no avail. As already stated, the said correspondence is on record. It is at Ex-`Z' (Colly.). On 22/6/1992, the plaintiffs issued a legal notice to the defendants. A copy of the said notice forms part of Ex-`Z' (Colly.). It is the case of the plaintiffs that as per the particulars of claim annexed to the plaint at Ex-`E' the defendants are jointly and severally liable to pay to the plaintiffs a sum of Rs.64,170.50 together with interest at 17% per annum which is the applicable rate as per the guidelines of RBI with quarterly rests as also costs thereof. According to the plaintiffs, they are also entitled to stocks of onion and potatoes.

6. The defendants are served. They have not contested the suit. No written statement is filed.

7. Having regard to the affidavit of Smt. Chitra Ramkrishnan, the averments of the plaint and the documents relied upon by the plaintiffs, I am of the opinion that the plaintiffs are entitled to a

decree in terms of prayer clause (a) of the plaint, which is the only prayer pressed by the plaintiffs with certain modification. Hence, there shall be a decree in terms of prayer clause (a) of the plaint with modification as regards rate of interest. The suit is therefore, decreed in terms of following prayer :

> *"(a) All the Defendants be ordered and decreed to pay to the Plaintiffs jointly and severally the aforesaid outstanding sum of Rs.64,170.50 with further interest thereon @ 17% per annum from the date of suit until actual payment, recovery or realization of the Plaintiffs dues in the suit."*

8. The plaintiffs will be entitled to refund of court fees if any as per rules.

9. The suit is disposed of accordingly.

[SMT. RANJANA DESAI, J.]